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COHEN MILSTEIN

July 5, 2022

VIA ECF

**MEMO ENDORSED**

The Honorable Katherine Polk Failla  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: *Iowa Pub. Emps. 'Ret. Sys. et al. v. Bank of Am. Corp. et al.*, No. 17-cv-6221 (KPF-SLC)

Dear Judge Failla,

Defendants' extension request—which would transform a 28-day schedule for objections to Magistrate Judge Cave's Report & Recommendation ("R&R") and responses, as prescribed by 28 U.S.C. § 636(b)(1) and Rule 72(b), into a 133-day schedule that also gives Defendants a superfluous reply brief not contemplated by the rules—should be rejected.

Plaintiffs' motion for class certification was filed on February 22, 2021 (*see* ECF No. 411), more than sixteen months ago. Defendants filed a 50-page opposition brief and 772 pages of expert reports as well as a sur-reply of 12 pages accompanied by an additional 132 pages of expert reports. Magistrate Judge Cave then held a full day hearing on April 28, 2022. *See* ECF No. 535. All slides from the parties' presentations from this full day hearing are available on the docket. *See* ECF Nos. 556-1 (Plaintiffs' opening presentation), 557-1 (Defendants' presentation), and 556-2 (Plaintiffs' rebuttal presentation). All of this material, is, of course, available to Your Honor. Defendants do not need 50 days to object and 30 days for a special reply brief to regurgitate arguments that have been fully ventilated already in this litigation.

As a professional courtesy, Plaintiffs' Counsel agreed not to oppose a one-week extension for both the objections and responses, but Plaintiffs' Counsel believes that this briefing could easily be done in the statutorily prescribed 28 days (14 days for objections, and 14 days for responses to objections). Accordingly, Plaintiffs respectfully request that Defendants' motion for more than a 100-day extension to the briefing schedule and a reply that is not contemplated by the rules be rejected. Should the Court grant Defendants any extension, however, Plaintiffs request that the Court allow a commensurate period for responses.

Respectfully submitted,

/s/ Michael B. Eisenkraft

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/s/ Daniel L. Brockett

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SULLIVAN, LLP

The Court is in receipt of the parties' letters setting forth their positions on the appropriate length of the briefing schedule for Defendants' objections to Magistrate Judge Cave's Report and Recommendation. (Dkt. #564, 565). The Court agrees with Defendants that the circumstances of this case, particularly the complexity of the issues presented, warrant an extension of the briefing schedule. Accordingly, the Court sets the following briefing schedule:

- Defendants' objections to the Report shall be due on or before **August 15, 2022**;
- Plaintiffs' response to Defendants' objections shall be due on or before **September 29, 2022**;
- Defendants' reply shall be due on or before **October 20, 2022**.

In previously accommodating the parties' request to brief the instant motion for class certification over a period of seven months, the Court informed the parties of its semi-annual reporting obligations to Congress. (Dkt. #417). Here too, the Court's accession to Defendants' request for additional time to brief their objections to the Report precludes the Court from complying with these same obligations. Thus, in order to ensure that the parties have sufficient time to fully brief Defendants' objections to the Report, without impacting the Court's ability to satisfy its reporting obligations, the Court will stay the case for the duration of the above-stated briefing schedule. For avoidance of doubt, this stay is purely for administrative purposes and the deadlines reflected above remain operative.

Accordingly, the Clerk of Court is directed to STAY this case pending further order of the Court. In addition, the Clerk of Court is directed to terminate the pending motion at docket entry 564.

Dated: July 6, 2022  
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE